

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

STEVEN D. CRAWFORD,	:	
	:	
Plaintiff,	:	No. 1: CV-03-0693
	:	
v.	:	
	:	
COUNTY OF DAUPHIN,	:	
CITY OF HARRISBURG,	:	
JANICE ROADCAP, JOHN C.	:	(Judge McClure)
BALSHY and WALTON	:	
DEWEY SIMPSON, JR.,	:	
ADMINISTRATOR OF THE	:	
ESTATE OF WALTER D.	:	
SIMPSON,	:	
	:	
Defendants	:	

O R D E R

January 30, 2006

BACKGROUND:

On March 28, 2003, plaintiff filed a complaint in the Court of Common Pleas of Dauphin County at docket number 2003-CV-1452. Shortly thereafter the matter was removed to the Middle District of Pennsylvania. On October 6, 2005, the court granted defendant City of Harrisburg's motion for summary judgment and denied the other defendants' motions for summary judgment. Upon a motion for reconsideration, on January 19, 2006, the court granted defendant County of

Dauphin's motion for summary judgment. The case is currently scheduled for the April 2006 trial list. Now before the court is Plaintiff's Motion in Limine to Preclude Testimony of Herbert L. MacDonell. (Rec. Doc. No. 218). For the following reasons we will hold a Daubert hearing on the admissibility of MacDonell's proposed testimony.

DISCUSSION:

I. Relevant Facts Regarding MacDonell

MacDonell testified as a Commonwealth expert at Crawford's second and third criminal trials. At trial, MacDonell opined that blood particles along the ridge areas of the print meant that the palm that made the print had blood on it. MacDonell's testimony regarding the transfer of the print helped secure Crawford's criminal convictions. On December 6, 2001, after the disclosure of a redacted and unredacted version of the Commonwealth's November 1972 lab notes evaluating the print evidence were released, MacDonell offered an affidavit which noted that MacDonell had "never seen the original lift" and more significantly stated:

Had I been provided with the information which was contained in the 29 November 1972 State Police report prior to my testimony, I would not have testified as a I did. In fact I would have most likely informed the jury that the palmprint evidence was of no value since it was not possible to establish when it was placed on the

vehicle.

(Rec. Doc. No. 218, Ex. D, at 2.)

As a result of MacDonell's 2001 affidavit, Crawford was released from prison and the prosecution declined to prosecute him again.

Since Crawford's release, MacDonell has again changed course. After reviewing photos of the original lift and conducting an in-house blood spatter print experiment, MacDonell again believes his testimony would be consistent with the testimony he originally offered at Crawford's criminal trials.

II. Daubert Hearing on MacDonell is Necessary

Plaintiff's motion in limine challenges MacDonell's experiment conducted for the purpose of testifying in the instant trial. Crawford asserts that MacDonell's experiment does not meet the reliability requirements necessary for admissibility of evidence under Fed. R. Evid. 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). Plaintiff asserts that: (1) MacDonell's experiment was dissimilar from the events which occurred at the time of the murder; (2) neither the test nor the methodology underlying the test have been published; (3) therefore the experiment and its underlying methodology have not been subject to peer review; (4) the in-house experiment was not conducted in a method or environment where potential error rates could be applied or evaluated to ensure accuracy and

correctness; (5) that the experiment was performed specifically for purposes of this case and was done without the benefit of any standards or controls; and (6) MacDonell's technique in conducting the experiment is not generally accepted in the scientific community. In light of plaintiff's concerns about the methodology employed by MacDonell in his most recent experiment the court will hold a Daubert hearing.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Our ruling on Plaintiff's Motion in Limine to Preclude Testimony of Herbert L. MacDonell is postponed until we have a Daubert hearing on his proposed testimony. (Rec. Doc. No. 218.)
2. The hearing will be scheduled at the final pretrial conference on February 2, 2006.

s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge